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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,507	06/30/2003	Ralf Herbrich	MS1-1506US	1160

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MICROSOFT CORPORATION  
ATTN: PATENT GROUP DOCKETING DEPARTMENT  
ONE MICROSOFT WAY  
REDMOND, WA 98052-6399

EXAMINER
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HOTALING, JOHN M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

J. Atch

<b>Office Action Summary</b>	<b>Application No.</b> 10/609,507	<b>Applicant(s)</b> HERBRICH ET AL.	
	<b>Examiner</b> John M. Hotaling II	<b>Art Unit</b> 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/8/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Application Publication 2002/0082077 to Johnson et al. Johnson discloses an interactive video game system with characteristics that evolve physical and cognitive traits. Paragraphs 5 and 6 of Johnson disclose that Johnson's invention provides an improved video game system and architecture that utilizes game characters having evolutionary capabilities. Unlike prior art game systems that are programmed to generate predetermined results according to specific game conditions, a system according to the present invention employs evolutionary computation techniques in connection with the behavior and capabilities of the game characters. In one practical embodiment, each game character ("digenome") has a unique digital genetic ("digenetic") structure that prescribes the physical capabilities, emotional characteristics, cognitive characteristics, physical appearance, and/or other traits of the game character. The digenetics of a game character can also influence levels of expertise, training, and physical and mental prowess exhibited by the game character during its life in a persistent gaming environment. In the context of a preferred network-based implementation of the present invention, each game character or digenome

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"lives" in a potentially perpetual universe maintained at one or more centralized servers. The performance characteristics, appearance characteristics, physical capabilities, and cognitive characteristics of the digenomes (which are preferably updated over time) are stored at the server level. The digenetic patterns of the digenomes are stored in a secure manner at the server level. In this manner, end users can interact with the virtual and perpetual gaming world in a remote manner via, e.g., the Internet. The server-based game system simulates the development of the digenomes, competition results, and evolution of digenomes by processing the current digenetic data, digenome characteristic data, game environment data, and other data that may be updated continuously over time. Johnson also discloses in Paragraph 0043 that the video game may be any type of game environments and the digenomes are designed specifically to support the specific environment. Paragraphs 49-65 disclose how a digenomes (avatars) are created using traits related to the environment and use of the digenome. Paragraph 65 discloses that the digenome does compete in competition and training and that the training can result in an increase or decrease of performance level depending on the result of the training being favorable or unfavorable. Paragraph 84 discloses that historical training and competition results. Paragraph 86 discloses that the digenome may be stored on a disk (claim 7). Paragraph 112 discloses that the system generates and saves competition records. Paragraphs 123-133 disclose the training and the recording of training results for future use. Johnson discloses all of the instant application but lacks in specifically disclosing a randomly selected training behavior from a training set of personalized behavior. Instead Johnson teaches that a

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training set of behaviors can be saved and can result in a favorable or unfavorable result which effects the avatars ability (behavior). With respect to claims 1, 4, and 6 please see above where the digenome is based on a plurality of traits relative to the environment where the digenome is to be used and where a randomly selected training behavior from a set of personalized behaviors is disclosed in paragraph 60 where the system is capable of creating new characters in a substantially random manner including behaviors and arbitrary weighted factors. With respect to the control signal see paragraph 125. With respect to claim 2 a track segment is defined in the instant application as a level, are a type of game segment, which may also represent a game turn in a strategy game, a scene in a role playing game, a level in a first person shooter, etc., or combinations thereof. In this case it is the environment. With respect to claim 3 please see the section relating to training. With respect to claim 5 see paragraph 55 with weighting factors. With respect to claim 8 please see the section outlined above where all competitions and training sessions are stored and result in a change in the avatar. With respect to claim 9 please see paragraph 123 where training can be selected depending on the game type and avatar type and is user selectable. With respect to claim s 10-18 and 19-27 these claims are the computer program and the system which correspond to claims 1-9 and are rejected for the same reasons as presented above.

#### ***Citation of Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All of the following references deal with the training and use of

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avatars in a computer game: Yokoi '871, Yamada et al '121, Namba et al '195, Niwa '856, Matsuyama et al '784, Hayes-Roth '549

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Hotaling II whose telephone number is (571) 272 4437. The examiner can normally be reached on Mon-Thurs 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272 3507. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JOHN M. HOTALING, II**  
**PRIMARY EXAMINER**

July 11, 2005

